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Ortega, 528 U.S. 470, 478-80 (2000) (regarding counsel's failure to consult about appeal); *United States v. Malone*, No. 10-6807, 2011 WL 3585073, at *1 (4th Cir. 2011) (citing *United States v. Peak*, 992 F.2d 39, 42 (4th Cir. 1993)) (finding when defendant requests his attorney to file an appeal, failure to do so "constitutes ineffective assistance of counsel, regardless of the likelihood of success on the merits").

Based on the United States' concession, I will grant Fultz's § 2255 motion as to claim (a), alleging that counsel was ineffective in failing to file or consult with Fultz about an appeal. I will dismiss Fultz's remaining § 2255 claim without prejudice to Fultz's refiling this claim in a later § 2255 motion following appeal, if necessary. *See, e.g., United States v. Killian*, 22 F. App'x 300, 301 (4th Cir. 2001) (unpublished).

A separate Final Order will be entered herewith.

ENTER: June 12, 2012

/s/ James P. Jones
United States District Judge